

STEPHEN J. SORENSON
United States Attorney

JARED BENNETT
Assistant United States Attorney

CHAD D. NARDIELLO
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6322
(202) 514-6632

Attorneys for United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,
v.

JOHN J. GAURUDER, an individual;
JANA GAURUDER, an individual;
JANA GAURUDER, as Trustee of
HIGH TETONS, A TRUST;
UTAH STATE TAX COMMISSION; and
US BANK, HOME MORTGAGE,

Defendants.

Judge Paul G. Cassell

DECK TYPE: Civil

DATE STAMP: 08/04/2006 @ 15:43:15

CASE NUMBER: 1:06CV00088 PGC

COMPLAINT TO REDUCE FEDERAL
TAX ASSESSMENTS TO JUDGMENT
AND FORECLOSE FEDERAL TAX
LIENS

The plaintiff, the United States of America, through its undersigned counsel, for its
complaint alleges the following:

FILED
U.S. DISTRICT COURT
2006 AUG -4 P 3:43
CLERK OF UTAH
CLERK

INTRODUCTION

1. This is a civil action brought by the United States to reduce to judgment the outstanding federal tax liabilities assessed against John J. Gauruder and Jana Gauruder, husband and wife, and to foreclose federal tax liens on certain real property, located at: 926 N 2300 W, Tremonton, Utah 84337 (“Tremonton Property”), located in the state of Utah. The United States seeks to have purported transfer of the Tremonton Property to Jana Gauruder, as trustee of High Tetons, A Trust (“High Tetons”), be declared fraudulent as against the United States, and to the extent it did acquire any title, High Tetons is a nominee of John Gauruder and Jana Gauruder.

JURISDICTION, VENUE AND PARTIES

2. This action is commenced pursuant to Sections 7401 and 7403 of the Internal Revenue Code, Title 26, U.S.C., at the direction of the Attorney General of the United States and at the request and with the authorization of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury.

3. The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402 and 7403.

4. Venue properly lies in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1396, because the defendant-taxpayers, John Gauruder and Jana Gauruder, reside in the District of Utah, and because the property sought to be foreclosed is located within the District of Utah. Defendants John Gauruder and Jana Gauruder are husband and wife, and their last known address is 926 N 2300 W, Tremonton, Utah 84337.

5. John Gauruder is made a party to this suit because he has unpaid federal tax

assessments against him, and he has an ownership interest in the Tremonton Property, the legal description of which is in paragraph 22, below.

6. Jana Gauruder is made a party to this suit because she has unpaid federal tax assessments against her, and she has an ownership interest in the Tremonton Property, the legal description of which is in paragraph 22, below.

7. High Tetons, with Jana Gauruder as trustee, is made a party to this suit pursuant to 26 U.S.C. § 7403(b), because High Tetons may claim an interest in property against which foreclosure is sought.

8. Utah State Tax Commission is made a party to this suit pursuant to 26 U.S.C. § 7403(b), because it may claim an interest in property against which foreclosure is sought.

9. U.S. Bank, Home Mortgage is made a party to this suit pursuant to 26 U.S.C. § 7403(b), because it may claim an interest in property against which foreclosure is sought.

STATEMENT OF CLAIMS

ASSESSMENTS

10. By this reference, paragraphs 1-9 above are fully incorporated as though the same were set forth fully herein.

11. A delegate of the Secretary made assessments of federal income taxes, interest and other statutory additions against defendant John Gauruder on the dates, in the amounts, and for the taxable periods set forth below:

| Tax Period | Tax Type | Date Tax Assessed | Assessed Tax | Assessed Penalties & Costs | Assessed Interest |
|-------------------|-----------------|--------------------------|---------------------|---------------------------------------|--------------------------|
| 1991 | 1040 | 03/24/1997 | \$33,544.87 | \$11,060.00 | \$22,266.29 |
| 1992 | 1040 | 03/24/1997 | \$38,752.00 | \$11,376.00 | \$18,794.41 |
| 1993 | 1040 | 03/24/1997 | \$43,662.00 | \$12,747.00 | \$16,054.96 |
| 1994 | 1040 | 03/24/1997 | \$44,819.00 | \$18,514.00 | \$10,567.66 |
| 1995 | 1040 | 10/01/2002 | \$26,407.00 | \$7,921.75 | \$19,232.44 |
| 1996 | 1040 | 10/01/2002 | \$36,585.00 | \$10,856.25 | \$20,565.66 |
| 1997 | 1040 | 10/01/2002 | \$26,672.00 | \$8,104.00 | \$10,851.91 |
| 1998 | 1040 | 10/01/2002 | \$37,003.00 | \$10,900.03 | \$12,571.55 |
| 1999 | 1040 | 11/12/2001 | \$40,427.49 | \$12,890.30 | \$6,985.18 |
| 2000 | 1040 | 09/03/2001 | \$32,912.00 | \$2,640.44 | \$1,092.84 |
| 2001 | 1040 | 06/03/2002 | \$12,515.00 | \$620.15 | \$101.20 |
| 2002 | 1040 | 06/23/2002 | \$27,673.00 | \$880.09 | \$262.79 |
| 2003 | 1040 | 08/02/2004 | \$18,791.00 | \$719.30 | \$264.70 |

12. Despite timely notice and demand for payment of the assessments described in paragraph 11, above, defendant John Gauruder has neglected or refused to make payment to the United States. Additional unassessed interest and other statutory additions as provided by law continue to accrue on this balance such that as of March 1, 2006, the outstanding liability of defendant John Gauruder with respect to the assessments described above is \$1,088,138.90.

13. A delegate of the Secretary made assessments of frivolous return penalties pursuant to 26 U.S.C. §6702, against defendants John Gauruder and Jana Gauruder on the dates,

in the amounts, and for the taxable periods set forth below:

| Tax Period | Tax Type | Date Tax Assessed | Assessed Tax |
|-------------------|-----------------|--------------------------|---------------------|
| 198812 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 198912 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 199012 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 199112 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 199212 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 199312 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 199412 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 199512 | 26 U.S.C. §6702 | 08/05/1996 | \$500.00 |
| 193001 | 26 U.S.C. §6702 | 01/31/2000 | \$500.00 |
| 193002 | 26 U.S.C. §6702 | 01/31/2000 | \$500.00 |
| 193003 | 26 U.S.C. §6702 | 01/31/2000 | \$500.00 |
| 193004 | 26 U.S.C. §6702 | 10/02/2000 | \$500.00 |
| 193005 | 26 U.S.C. §6702 | 10/02/2000 | \$500.00 |
| 193006 | 26 U.S.C. §6702 | 10/02/2000 | \$500.00 |
| 193007 | 26 U.S.C. §6702 | 10/02/2000 | \$500.00 |

14. Despite timely notice and demand for payment of the assessments described in paragraph 13, above, defendants John Gauruder and Jana Gauruder have neglected or refused to make payment to the United States. Additional unassessed interest and other statutory additions as provided by law continue to accrue on this balance such that as of March 1, 2006, the outstanding liability of defendants John Gauruder and Jana Gauruder with respect to the assessments described above is \$12,820.57.

LIENS

15. As a result of the assessments described in paragraphs 11 and 13 above, and the failure of John Gauruder and Jana Gauruder to pay said assessments after timely notice and demand, the United States has liens in its favor which attach to and encumber all property and rights to property, whether real or personal, belonging to John Gauruder and Jana Gauruder pursuant to 26 U.S.C. § 6321.

16. On September 2, 1997, a delegate of the Secretary of the Treasury recorded a Notice of Federal Tax Lien with respect to the assessments against John Gauruder for income taxes for 1991, 1992, 1993, and 1994 tax years in Box Elder County.

17. On September 2, 1997, a delegate of the Secretary of the Treasury recorded a Notice of Federal Tax Lien with respect to the assessments against John Gauruder and Jana Gauruder for frivolous return penalties for the 1988, 1989, 1990, 1991, 1992, 1993, and 1994 tax years in Box Elder County.

18. On October 6, 2003, a delegate of the Secretary of the Treasury recorded a Notice of Federal Tax Lien with respect to income tax assessments against John Gauruder for the 1995, 1996, 1999, and 2000 tax years in Box Elder County.

19. On November 1, 2004, a delegate of the Secretary of the Treasury recorded a Notice of Federal Tax Lien with respect to income tax assessments against John Gauruder for the 1997, 1998, 2002, and 2003 tax years in Box Elder County.

20. On November 30, 2000, a delegate of the Secretary of the Treasury recorded a Notice of Federal Tax Lien against High Tetons as a nominee, with respect to the assessments

against John Gauruder for income tax assessments for 1991, 1992, 1993, and 1994 tax years in Box Elder County.

21. The federal tax liens described in paragraphs 16 through 21, above, attached to defendants John Gauruder's and Jana Gauruder's interest in the Tremonton Property described in paragraph 22, below, and remain on the Tremonton Property, despite any subsequent transfers.

SUBJECT PROPERTY

22. The Tremonton Property that is the subject of this foreclosure action is a parcel of real property with the following legal description:

Lot 1, Block 1, JAMES TOWN SUBDIVISION, a Box Elder County
Subdivision, Located in the Northeast Quarter of Section 5, Township 11
North, Range 3 West, Salt Lake Meridian

The Tremonton Property described immediately above is commonly identified as: 926 N 2300 W, Tremonton, Utah 84337.

23. On September 17, 1985, a warranty deed was recorded with the Box Elder County Clerk and Recorder transferring the Tremonton Property from Dennis and Sandra Roberts to John Gauruder and Jana Gauruder, husband and wife, as joint tenants. Subsequently, on October 8, 1985 a corrected deed was recorded to amend the legal description of the Tremonton Property.

24. On July 30, 1992, a Deed of Trust dated July 21, 1992, was recorded with the Box Elder County Clerk and Recorder whereby John Gauruder and Jana Gauruder granted a mortgage on the Tremonton Property in favor of Western Mortgage Loan Corporation in the amount of \$69,251.00.

25. On March 30, 1998, an Assignment of Deed of Trust was recorded with the Box

Elder County Clerk and Recorder whereby Western Mortgage Loan Corporation assigned its interest in its Deed of Trust to Great Financial Bank. Firstar Bank, NA acquired this Deed of Trust from Great Financial Bank. Subsequently, both Firstar Bank, NA and Great Financial Bank were acquired by US Bank, NA, which is the current mortgagee.

26. Currently, the Tremonton Property is encumbered by the above-described mortgage as security for a loan in the names of John Gauruder and Jana Gauruder

FRAUDULENT CONVEYANCE AND/OR NOMINEE

27. On January 24, 1996, a quitclaim deed was signed, publicly notarized, and filed with the Box Elder County Recorder purporting to transfer the Tremonton Property from John Gauruder and Jana Gauruder to Teton Foundation for the stated consideration of \$10.00.

28. On October 15, 1997, a quitclaim deed was signed, publicly notarized, and filed with the Box Elder County Recorder purporting to transfer the Tremonton Property from Teton Foundation to John Gauruder and Jana Gauruder for the stated consideration of \$10.00.

29. On October 15, 1997, a declaration of land patent was signed, publicly notarized, and filed with the Box Elder County Recorder seeking to obtain a land patent in the names of John Gauruder and Jana Gauruder in the Tremonton Property.

30. On October 15, 1997, a quitclaim deed was filed with the Box Elder County Recorder purporting to transfer the Tremonton Property from John Gauruder and Jana Gauruder to High Tetons.

31. On October 24, 1997, a quitclaim deed, almost identical to the one recorded on October 15, 1997, with the only difference being the addition of Jana Gauruder as trustee, was

filed with the Box Elder County Recorder purporting to transfer the Tremonton Property from John Gauruder and Jana Gauruder to High Tetons.

32. Despite the purported transfer of the Tremonton Property by John Gauruder and Jana Gauruder described in paragraph 38, above, High Tetons' receipt of the Tremonton Property was the result of a fraudulent transfer by John Gauruder and Jana Gauruder pursuant to Utah Code Ann. §§ 25-6-5 and 25-6-6.

33. Despite the purported transfer of the Tremonton Property by John Gauruder and Jana Gauruder described in paragraph 38, above, John Gauruder and Jana Gauruder continued to have the use and enjoyment of the Tremonton Property such that, to the extent that High Tetons holds title to the Tremonton Property, it does so as a nominee of John Gauruder and Jana Gauruder

34. John Gauruder and Jana Gauruder purportedly transferred the Tremonton Property to High Tetons at a time when they had knowledge of outstanding tax liabilities due and owing to the IRS for multiple tax periods.

35. John Gauruder and Jana Gauruder purportedly transferred the Tremonton Property to High Tetons of which Jana Gauruder, an insider, was trustee.

36. The purported transfer of the Tremonton Property to High Tetons was for inadequate consideration.

37. After the purported transfer of the Tremonton Property to High Tetons, John Gauruder and Jana Gauruder continued their occupation of the premises, payment of the utilities, and payment of the mortgage.

PRAYER FOR RELIEF

WHEREFORE, the United States prays as follows:

A. That judgment be entered against defendant John Gauruder and in favor of the United States in the amount of \$1,088,138.90 as of March 1, 2006, plus interest and statutory additions accrued thereafter less any applicable credits.

B. That judgment be entered against defendants John Gauruder and Jana Gauruder and in favor of the United States in the amount of \$12,820.57 as of March 1, 2006, plus interest and statutory additions accrued thereafter less any applicable credits;

C. That the court determine that the United States has valid and subsisting federal tax liens, by virtue of the assessments set forth above, on all property and rights to property of defendants John Gauruder and Jana Gauruder, both real and personal, tangible and intangible, including their interest in the Tremonton Property;

D. That the court determine that to the extent that the Tremonton Property was transferred to High Tetons, such transfer was fraudulent as against the United States, pursuant to Utah Code Ann. §§ 25-6-5 and 25-6-6;

E. That the court determine that to the extent that High Tetons holds title to the Tremonton Property, it does so as the nominee of defendants John Gauruder and Jana Gauruder, and that the United States' tax liens attached to the Tremonton Property, which is nominally held by High Tetons;

F. That the court order that the United States' tax liens encumbering the Tremonton Property be foreclosed;

G. That the Tremonton Property be sold pursuant to 26 U.S.C. Section 7403 and 28 U.S.C. Section 2001, and that the proceeds of such sale be applied first to the costs of sale, second to satisfy the deed of trust held by U.S. Bank, Home Mortgage, and third to the United States to satisfy its federal tax liens;

H. That the United States be granted a deficiency judgment in the amount of any tax indebtedness not satisfied by the sale of the Tremonton Property;

I. That the court issue an order evicting the current occupants from the Tremonton Property to facilitate possession of the Tremonton Property by a bona fide purchaser; and

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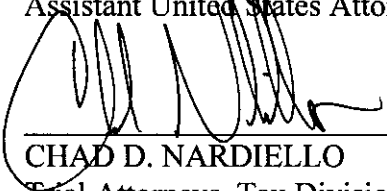
J. That the United States be granted such other relief as the court deems just and proper, including fees and costs as allowed by law.

DATED this 3rd day of August, 2006

Respectfully submitted,

STEPHEN J. SORENSON
United States Attorney

JARED BENNETT
Assistant United States Attorney



CHAD D. NARDIELLO
Trial Attorneys, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 514-6632
Facsimile: (202) 307-0054

Attorneys for United States of America

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Chad D. Nardiello, U.S. Dept. of Justice, (202) 514-6632

DEFENDANTS

John J. Gauruder, et al. (see attached complaint)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. sections 7401 and 7403

Brief description of cause:

Complaint to reduce federal tax assessments to judgment and foreclose federal tax liens

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

1,100,959.47

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/3/06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

Judge Paul G. Cassell

DECK TYPE: Civil

DATE STAMP: 08/04/2006 @ 15:43:15

CASE NUMBER: 1:06CV00088 PGC